IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SHOW CAUSE NOTICE NO.1174 OF 2004

IN

SUIT NO.2441 OF 1990

Juhu Consumer Stores Ltd. ... Plaintiff.

vs.

Mohammed Ayyaz & others. ... Defendants.

Mr.Govilkar, for Plaintiff.

Mr.R.A.Thorat, for Defendant no.1/Contemnor.

Contemner present in person.

Mr.D.V.Deokar, 1st Assistant to Court Receiver present.

CORAM: D. K. DESHMUKH &

J. H. BHATIA, JJ.

DATED: 17th October,2007

P.C.:-

1. The show cause notice dated 13th August,2004 was issued to the defendant no.1-contemnor for using forged and fabricated letter and obtaining an order dated 29th June,2004 on the basis of that forged letter. In that show cause notice, the order was made by the learned Single Judge of this Court holding the noticee guilty of having committed contempt of the Court and sentenced to undergo simple imprisonment for a period of thirty days and to pay fine of Rs.2,000/-. An appeal was preferred against that order being appeal no.770 of 2006. When that appeal came before the Appeal Court, the Appeal Court on finding that because the allegations that have been made against the noticee are of criminal contempt, final order on the show cause notice could not have been made by the learned Single Judge, set aside the order of the learned Single Judge by order dated 13.8.2007 and directed the office to place the notice before the Division Bench for decision in accordance with law. Accordingly, the notice has been placed

before us.

2. The noticee has filed his reply. We have heard the learned Counsel appearing for noticee. The noticee does not dispute that the letter which is alleged to have been given by the Corporation was not a genuine letter and was a forged and fabricated document. It is clear from the record that it is only on the basis of that letter the order dated 29.6.2004 was made by the Court. He has given some explanation as to how he secured that letter from the Corporation, but the explanation is absolutely vague. It is clear that the noticee procured that letter which was not a genuine letter and produced it before the Court and obtained a favourable order. Thus, the conduct of the noticee of producing before this Court a letter which is admittedly a forged and fabricated letter and obtaining favourable order form this Court, clearly amounts to criminal contempt of this Court. The learned Counsel appearing for noticee submitted that the noticee has tendered an unconditional apology and that apology may be accepted. In our opinion, looking to the conduct of

the noticee throughout, the apology is incapable of being accepted. It is clear from the record that the noticee was in possession of the premises as agent of the Court Receiver from 5.9.1991 to 21.12.2004. He was liable to pay royalty, he did not pay royalty. He gave an undertaking before the Court that he will deposit Rs.11,00,000/- (Rupees Eleven lakhs only) as arrears of royalty. Despite that undertaking he never deposited the amount. Therefore, in our opinion, it cannot be said that the apology is either real or heartfelt. So far as the question of sentence is concerned, in our opinion, considering the conduct of the noticee of procuring a forged and fabricated letter and producing it before the Court and his conduct of enjoying property as agent of the Court Receiver without paying the amount of royalty which he was liable to pay, despite giving undertaking to the Court, makes him liable to imposition of sentence on him. In our opinion, if we do not impose sentence on the noticee, we will be giving wrong message to the litigating public.

3. Taking overall view of the matter therefore,

in our opinion, it will be appropriate to sentence the noticee undergo simple imprisonment for a period of one month and to pay fine of Rs.2000/- In case, under the order passed by the learned Single Judge which has been set aside in appeal referred to above, the noticee has undergone any imprisonment, credit will be given to him for the undergone sentence. Similarly, as by the order dated 19.4.2005 fine of Rs.2000/- was imposed on him, if the noticee produces proof that he has paid the amount of fine then it will not be necessary for him to pay the amount of fine which is imposed by this order. Notice of motion is disposed of.

At this juncture, a request is made for suspending the sentence. At the request of noticee, the order imposing sentence is suspended for a period of four weeks from today.

(D.K.Deshmukh, J.)

(J.H.Bhatia, J.)